LAKE COUNTY PLANNING BOARD
February 10, 2016
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, Steve Shapero, John Fleming, Sigurd Jensen, Rick Cothern, Bob Stone, Frank Mutch, Eileen Neill, Jerry Parson

STAFF PRESENT: LaDana Hintz, Lita Fonda, Wally Congdon

Steve Rosso called the meeting to order at 7:01pm. New members were introduced: Eileen Neill, Jerry Parson and Frank Mutch.

Motion by Steve Shapero, and seconded by Rick Cothern, to approve the Nov. 12, 2015 meeting minutes. Motion carried, 8 in favor (Steve Rosso, Steve Shapero, John Fleming, Sigurd Jensen, Rick Cothern, Bob Stone, Eileen Neill, Jerry Parson) and one abstention (Frank Mutch).

Steve R pointed out corrections in the Dec. 2015 minutes. On pg. 5 in the next-to-last sentence in the next-to-last paragraph, 'put regulations' changed to 'put in regulations'. On pg. 7, in the fourth line from the end of the second paragraph, the wording was corrected to 'weren't dirt lawyers' instead of 'were'. On pg. 12, in the second line of the third paragraph, the wording was corrected to 'in the public' instead of 'in that public'. **Motion by Rick Cothern, and seconded by Sigurd Jensen, to approve the Dec. 9, 2015 meeting minutes. Motion carried, 7 in favor (Steve Rosso, Steve Shapero, John Fleming, Sigurd Jensen, Rick Cothern, Bob Stone, Eileen Neill) and one abstention (Jerry Parson, Frank Mutch).**

LaDana checked that the board members had the color handout that had been distributed last month.

RIGHT TO FARM POLICY (7:07 pm)

LaDana Hintz began the discussion. Steve R had provided comments prior to the last Planning Board meeting, which along with the discussion comments from that last Planning Board meeting had been incorporated into a document draft for their further thought and comments.

Wally said ancillary agriculture was a big thing. He gave the example of a goat dairy as an ancillary agricultural operation. The whole language in there about ancillary agricultural purposes was where they were trying to go to. A dairy would have to have a separate drainfield and a separate septic. The rules were tied together. The health department rules applied too. Some of these were simple. Right to farm was a policy statement from the county that tied into other things, like conservation easements. It said [agriculture] wasn't a nuisance and that there was a commitment to recognizing its importance, history, how they've done it and what it was.

Wally noted a complicated thing for Lake County was that there were nine herd districts. He'd seen maybe six total altogether previously. Montana's laws were that outside of herd districts, you fenced cows out. In a herd district, you fenced them in. He liked the point that 20 years

ago, there wasn't much on organic or GMO. They couldn't say someone couldn't grow it. They could say it was very important to respect what your neighbor was doing and try to make sure that all agriculture could coexist. That was the message.

Steve R gave some thumbnail calculations. Lake County had a little over a million acres, with about a thousand farms, which averaged about 600 acres. That meant between 50 and 60 percent of the acreage in Lake County was agricultural. Having a right to farm made sense in Lake County. Frank thought if small agricultural activities such as the small orchards were included, the number would be greater. Steve thought those were included in his numbers.

LaDana described that a lot of the material written in the policy was educational. People moving in to the area didn't know some of the basic items about living here. Per page 8, education was a huge component of this. Agriculture was an important part of the economy in the area. If they wanted to keep that, they would need that component there. This would be a component of the growth policy and an implementation tool they would have as part of that.

John asked what it meant that this was an ordinance rather than a regulation. LaDana thought it was actually a resolution. John referred to the color chart. What was its relationship to the growth policy? LaDana described that the growth policy was central in the chart. Around it, you had the different regulations, plans, policies and different entities who implemented those things or with whom the County worked those things. She explained how the outer sections were arranged. For instance, under floodplain development, the things above it dealt with what they looked at when they dealt with floodplain regulations. They tried to get the basic concepts in there. John verified with LaDana that right to farm was policy. When dealing with an issue, they should have that policy in mind. LaDana said this really came into play with subdivision review. One review criteria was agriculture. They could have something to draw on for what they based the decision on. John thought that sounded good.

Steve R asked what determined what would be a policy and what would be a regulation. LaDana pointed to state law. Regulations such as subdivision and zoning were written into state law regarding adoption. The County had opted to adopt some zoning districts. Subdivision regulations were required. Right to farm was not required but it played into other things like the zoning and subdivision regulations. When you reviewed subdivisions, you reviewed agriculture. On what would you base your decision? You implemented a policy on which to base that decision.

Jerry asked whether the future regulations such as zoning must conform to this policy if the Commissioners adopted this. Wally said the Commissioners must be guided by the policy. It wasn't absolute. LaDana observed that currently many of the zoning regulations incorporated things on having orchards. The East Shore, Finley Point and Upper West Shore zoning districts had orchards. They wanted to make sure to protect those rights.

Wally gave examples where overspray killed neighboring grape vines or trees. Bob asked what would happen that wouldn't happen otherwise in the overspray example if a right to farm policy was in place. Wally said they'd have a reason to put it in the subdivision and plat approvals. With the vineyard example, it would have been much easier for the vineyard owner to go to the

person who oversprayed and say that the sprayer would pay for the [damages] because he had interfered with agricultural production. It might happen in a lawsuit or the person's insurance firm would probably pay it. Bob concluded it was a private matter backed up by the ordinance policy. The teeth were in the policy for the citizen's lawsuit. Wally said the other teeth were the policy guide like for subdivision regulations. He gave examples, such as to get people to quit mowing lawns in the irrigation ditch, which screwed up the irrigation pumps and equipment. For subdivisions, a note on the plat would say this county had a right to farm ordinance and that they complied with the policy. It put huge teeth in getting people to do things a little better. Bob said the teeth weren't available unless you hired a lawyer. Wally said the other teeth would be conditions in restrictive covenants that the County could enforce like the requirement to have a weed management plan in the subdivision plat approval. If someone didn't manage the weeds, the County could step in. Right to farm said it was important for agriculture. The bill for spraying would attach to the tax bill of the person whose weeds had to be sprayed. A whole bunch of things happened as a result [of right to farm] that tied back to the policy.

Wally returned to the question about what to do about non-GMO, organic and so forth. They were acknowledging that it mattered. It was an important market and different agriculture, which he called agri-counter-culture. It was the new ag. Most who were 'natural' were 20 acres or less. Most organic orchards were 10 acres or less. Ag was still the biggest industry in Montana. The seed potatoes for Washington and Idaho were grown here in Pablo. These were certified seed potatoes, free of certain weevil or worm or mold or fungus, and certified weed free. The same held with the issue of certain flies or bugs on the cherry crops. Were they going to encourage people to spray their cherry orchards to get rid of the bugs? If they got encouraged and busted, which state law said you did, this policy backed up doing that. It was a larger picture of other ancillary things.

Steve R said hopefully other than just giving teeth to win a lawsuit, this had a huge education component so that they could avoid that situation. It could be written on every plat and communicated to the real estate people so they wouldn't have the lawsuits. LaDana said that was why the education component was in there. It was among the biggest complaints they heard, both by the farmer and by the neighbor. If they put a policy out there, they started to educate people on what they should be doing to be a good neighbor.

Wally remarked that related things came up. For instance, especially on the front of the Missions, you needed to get rid of a dead cow soon. If you didn't, the grizzly bears would be in your yard. Part of it was the way you encouraged people in agriculture to be responsible as well. You kept the apples from your tree picked up off the ground in some areas or you'd have drunken, cranky bears. The policy was a two-way street in terms of policy directives from the County. These were guidelines for everybody.

Frank asked if this was voluntary. Wally said this led to subdivision rules that required people to do it. The basic thing on which right to farm was founded on was that agriculture was not a nuisance. The purpose was to say that agriculture was not a nuisance. You needed to be aware that this went on. Agriculture was directed to not be a nuisance. It was a two-way street. Frank said between resolution and when it got in the zoning, it was guidance rather than enforceable. Wally said it was enforceable in that it kept people from saying that agriculture was a nuisance

and suing you for a nuisance. Wally gave the example of abuse of right to farm in the Midwest by alcohol plants and in Idaho with subgrade potato products. Steve R asked how this protected Lake County from that. Wally replied the language was included regarding ancillary, historic agricultural activities. They had no feedlots except a couple small ones in [inaudible] so a big feedlot would be new agriculture, which you couldn't do.

John asked how they sorted through it if something new pertaining to agriculture came up. Wally answered two things happened. It didn't count as something that was qualified as [inaudible] if it wasn't ancillary to agricultural activities or diversification or historically something that they did. He gave the example of cherries recognized as agriculture. That was different than putting in a 5000-cow feedlot, which they never had and didn't want to be doing. The historic component was part of it and was a baseline. LaDana said the plan would be modified over time, as new practices came in. In future years, there would be new ones and the County would want to go in and update. Wally said it encouraged ancillary uses, which was diversification. He gave the example of a creamery. There used to be creameries in Ronan. If someone came back to put in a smaller creamery, that was fine. It was a historic function, but you didn't get to dump millions of gallons of milk-polluted water every day in the river as a discharge. Ancillary was reasonable in size, reasonable in history and reasonable in scope. They encouraged diversification. Monocultural agriculture, where someone raised just one kind of a potato or grain for instance, previously didn't exist. The Polson farmers market had 25 or 30 people selling agricultural products all summer long. That was diversification and agri-counter-culture and new. That was what it ought to be. That was what the ordinance encouraged. Historically, they were diversified.

Steve R suggested they go through the draft page by page. He pointed to Whereas.a on pg. 1. It looked like the term alternative agriculture wasn't defined. If the term was used somewhere in 2.f on pg. 6, it might connect things. Wally thought that was a good idea. They could reference it that way or if they just needed a definition, they could define it. He mentioned that right to farm defined agriculture, which was an art as well.

Frank pointed to the grammar and sentence length in the third line of the first paragraph on pg. 1. LaDana asked Wally if the Whereas statements in a resolution didn't include sentences. Wally said you kind of had sentences but they were block ideas. You could do it either way. LaDana replied to Frank's concern that this was the way it was set up. There were no periods throughout the whole thing. She was using a template and her understanding was that periods were not used in that. Wally said if it made more sense to shorten them down, they could do that. He would shorten it. LaDana thought if they started to do that, they'd have to do it through the whole document, based on how it was written up. The first part was written as a resolution.

Frank suggested adding fields where the draft talked about burning ditches on pg. 1 in the second paragraph in the next-to-last line. Steve R thought that was part of the two-way street. Would the farmer be considered irresponsible or negligent by picking the wrong time to burn a field? Or were there other ways to treat the field? Wally said that you might say in the policy that you encouraged alternate, more progressive mechanisms or methods of agricultural activities wherever possible. You could encourage alternate things that were more environmentally

sensitive or friendlier to the neighborhoods and air quality and water quality of Lake County. It wasn't in there now but it could be put in.

Frank asked about malicious herding of livestock. Wally gave examples.

John mentioned that people didn't burn stuff in the past but now burned in Moiese and by Mission. They wanted to be careful that they didn't get in the way of something. Steve R thought John was right but he'd questioned some farmers about burning. He hadn't gotten a good answer. It was more along the lines of 'that's the way we've always done that'. Wally said you got rid of wheat rust that way. Stuff wouldn't grow in the stubble lying behind the combine. You got rid of the problem of plugging up your chisel plows and your stuff the next spring. There were lots of reasons they did it for years. Sometimes now, when it's not burned, you could see where the combine went through the field. The whole field comes up except that row. There was a science behind why they did it for years. It freed up a lot of phosphorus and potassium. Steve R pointed to a recent news story where a fire got away from people burning a field next to a wildlife refuge and caused a big problem in Oregon. Trying to keep agriculture moving with the state of the art was a good thing. Wally said it wasn't saying you couldn't do it the other way. It was saying there was a better time. He thought when Gale got calls in the Commissioners office [on burning], the problems included that you couldn't see, people with asthma couldn't breathe and the fire resources that might be needed if the fire got away from someone were fighting forest fires. That was the least best time to burn a field. That was part of the common sense equation. It was a good thing to put in there.

Frank asked if the burning regulations trumped this. If all burning was shut down, a farmer would be violating an existing rule. Wally said it depended on the rule that was passed and if the open burning season was done by the County or the State, based primarily on air quality. It was a question of common sense. It was easier not to have to ask the question in the first place. If there's a stage one fire alert with significant fire extreme and the air is screwed up, it wasn't the time to burn the fields if you could help it. Clean the air up first.

The Board moved on to pg. 3. Steve R corrected 'responsibly' to 'responsible' in 1.a.i on pg. 3. In 1.a.ii, he added 'Legal, responsible and non-negligent' to the beginning of the sentence. In 1.c, he suggested adding non-negligent in the last line between 'legal' and 'farm'. Wally said you could put it there. It certainly encouraged people to be responsible and gave a bit of an education. He mentioned how the orange triangles were for vehicles that traveled less than 30 mph. If you didn't do it, you were probably being negligent. The purpose was to encourage a bit more public health and safety. Farm equipment didn't have taillights.

On pg. 4 in the last line of 2.a, Steve R changed 'usuip' to 'usurp' and in the next-to-last line of 2.a.i, he changed 'creation' to 'create'. He asked about the right half of the fence in 2.a.iii. Wally explained that if two neighbors looked at each other over a fence, each would have the portion to the right of the middle to maintain. The two right halves met in the middle. Steve said as long as there was a definition for this, it was fine. LaDana offered to add more. She didn't know how complicated it needed to get. Wally gave anecdotes about fencing. The reason for the policy was it affected a lot of other things later. John asked about a situation where a fence had an opening rather than a gate. Who was generally responsible for damage if cattle entered

and tore something up? Wally replied that unless it was in a herd district, the land owner had to fence the cows out. He mentioned a case in the Bitterroot with regard to gates. If there was a gate, it had to be reasonable for people to use and it better have been there historically. Bob asked if the part with tight gates was in [the draft] now. Neighbor feuds were common. It would be good to have applicable language in here. Wally thought they could write something saying that, in terms of using facilities that adjoin a use. The other big one besides gates was head gates. A paragraph about commonly used facilities like gates, fences, head gate structures and so forth saying they shouldn't be modified and should be kept manageable by all persons who were affected or of interest might be the way to do it. John agreed. Steve R suggested adding something to 2.a.vi saying that the gates needed to be reasonably operable.

Wally described they added a comment that most county roads historically were called cattle tracks. Montana still had a law where a county could create a cattle track. These were recognized by the government as the way people trailed their cattle. To preserve the history of trailing cattle, it was important to keep fencing along county road rights of way intact. John thought they might have to distinguish between herd district or not. Fencing in would be different. Wally agreed and added if you were trailing on a county road, this was transportation. Whether or not it was a herd district, you could trail them there. If the fence was gone, it didn't work for anyone. He and John gave examples of where fences were gone. Gale Decker said in a lot of places like North Crow, the fences were taken because they impeded the wildlife. The deer got hung up in them. John said people doing spuds and rotations rather than cattle didn't need fences. Wally commented that Fish and Game had standards for fences that were wildlife-friendly. John listed 14-inches up (for animals going under) and 42-inches high as standards. Wally said 42 had been raised to 47. A whitetail could jump it fine when a wolf was motivating it.

Steve R asked if electric fences should be signed or if 'care' should be left open to interpretation. Wally said they'd left it open to avoid someone claiming they didn't have enough signs. If you had the yellow insulators that were the color of the little signs, they could be seen from a long distance. You needed to pick some color other than black for the insulators. Yellow was the best. Steve R asked about people moving here from out of state. Bob thought they'd only make that mistake once. He didn't know about serious injury. Wally provided an example involving saline solution and small boys. Steve mentioned seeing injury resulting from jumping back away from the fence rather than from the fence directly. Bob mentioned fenced beehives with higher voltage. He thought that was unusual. Wally said those had big signs, especially for bees. The board talked about this further.

In 2.a.vii, Steve R changed 'stay' to 'stray' at the end of the second line. Frank added a clarification to 2.a.ii to say 'and fenced out otherwise'. Wally added 'except as provided by law' to follow Frank's wording, since there were a few exceptions such as some limitations on goats, sheep, llamas and stud horses.

The Board progressed to pg. 5. Steve R asked about the wording in 2.b.iii. Jerry liked the wording. He gave the example where if you didn't like the smell of a barn, you should build your house far enough away from it. LaDana recalled a recent Valley View subdivision next to open land with the potential acreage to be used for animals. People might want to think about

the possibility of a neighbor moving in and having animals, so maybe they didn't want to build right on the fence line. In most subdivision reviews, they said 100-foot setbacks from agricultural lands. That would tie in also. That was how they got those pieces implemented into the growth policy and the subdivision regulations. It would tie to this.

Steve R asked about 2.c.i. Regarding the irrigation operator or user, the idea was he needed access to those irrigation ditches. Was the way he accessed through an easement? If there was a field that he'd been driving across and the property sold, and the new owner wanted to close that path, would the farmer [using the irrigation] need to use another, approved access? Gale thought part of that was addressed under 2.c.ii. The first one talked about the public accessing other people's property by using irrigation ditches. In 2.c.ii, if you used the water, you shouldn't be impeded from obtaining your irrigation water, which meant you could clean the ditch and so forth to make sure the water flowed to your property. They couldn't deny you access. Steve R checked that if access was available through some public way, you shouldn't be able to access it over somebody's private land. Wally said you could. When the patents for lands were signed, the standard language in the patent was that it was subject to canals, ditches, waterways, [inaudible] and maintenance and operation. It was on the patent from the federal government. Irrigation was the way they were going to develop the West. If there was a concern about how many people did it, that was related to irrigation not public access. Steve R said a new landowner bordering an irrigation ditch would have to accept that the farmers who used that water and the irrigation project operator might have to cross that land to have access to that ditch.

Wally said the hard part was if you looked at the old irrigation ditches, especially on the east side of the Missions, there were huge cottonwood trees along the ditches. No one worried about it back then. Ditches were done then with a shovel and a team of horses, and walked. Now there's a bigger track hoe. In the Bitterroot, new owners cut these trees down. The courts said the maintenance of the ditch was the maintenance done historically. If that was by shovel, that was what you could do. The maintenance thing was a responsible feel about what was historically done. You didn't get to expand it and cut the trees down because you had a bigger bulldozer.

Gale observed people liked to run or ride their bikes on the feeder canal. Landowners would put in gates to deny people access. From what he was told, they had the legal right to it because he didn't have an established easement to run on the canal bank. A lot chose not to put in gates, which was much appreciated. Jerry mentioned the canal banks in the Jocko were used as roads. There were houses accessible only by the canal bank. Gale thought they must have gotten an established easement.

Bob returned to the original question, which sounded like using a shortcut across the neighbor's that no one complained about, where a new owner wanted to restrict the shortcut. Wally said people were encouraged to not increase the encroachment of easements or rights of way for repair, maintenance and operations. That involved things like the route of access and not cutting down historic trees. Jerry commented if the ditch rider had been using the shortcut for 30 years it was probably an established easement. Wally added unless it was permissive. John checked that he was saying it had to be adverse and Wally agreed. Steve asked if they needed to add to this. Wally suggested they could add a note not to increase the encroachment, which was the scope of the easement, to respect historic maintenance and operation of the same. That would be

a good thing to put in there. The ditches that ran year-round were stock water. There was also a claim for stock water in the ditches so some ditches ran year round. In cold years, they froze and flooded. That was the nature of the water right in the ditch. It was okay.

On pg. 6, Steve R asked if they needed to add a definition for noxious weeds or refer to the state listing in 2.d. LaDana thought they could put in something to point to the list. Wally suggested adding a sentence that included 'or other pests' since it wasn't just noxious weeds. There was the cherry fruit fly, the apple scabies disease and potato disease. When you talked about other pests, you were talking about other bugs that caused great grief and things that really hurt the value of your agricultural product. Wally said you were supposed to spray. The problem was there'd been no enforcement. You had to spray if you were commercial. The people who weren't on commercial were the ones causing the grief. LaDana asked if they should mention something about the commercial versus the residential operations. A lot of people had home gardens and orchards. Wally thought they should reference it and encourage family agricultural operations for personal or family use and they would need to abide by some of the same rules and traditions of other producers. They would have the same obligation to not overspray and so forth. He thought that was a good idea.

Frank thought this area needed attention. As far as he knew, the only control for spraying for bugs on orchards was the market. He guessed that no one enforced that if you had a few trees. That was an area of contention between small orchards and big orchards. The use of proper pest treatment should be encouraged. What about the mosquitoes? That was a public health issue but might be beyond the scope of this.

Steve R pointed to 2.f at the bottom of pg. 6. Could they use the term 'alternative agriculture' in this paragraph to define or reference what the word used on the front page meant? Bob referred to the list on the next page where they could add it or make it the heading.

Rick read the last sentence of 2.e on pg. 6. Was there another side where the non-GMO's had a responsibility not to impact the GMO's? Wally said so far, the litigation and rules had been the GMO's affecting the non-GMO's. One reason had to do with GMO patents and the companies who owned them wanting to get money back from people. The other reason was why tons of wheat sat in Portland that couldn't be shipped. It was supposed to be non-GMO wheat to go to Japan, and they found some GMO in two of the truckloads. You could put it both ways. He thought the bigger thing they'd see with cherries was issue with pressure to replace Lamberts and other historical cherries for those that were more storable and ripened at different times. If your Lapins cross-pollinated with someone else's Lambert trees, you might lose it and have less storable cherries. Gale said people planted orchards for tax benefits with no intention of being a producer. Maintenance of their orchard wasn't an issue. They wanted the tax benefits and didn't care if they sold cherries. Steve R described people he knew of who planted their orchard and saved enough in taxes to put in new trees every three years when the other trees died so they kept their exemption. Frank said there was a requirement to produce $1500 in revenue in 6 or 7 years.

Steve R understood that a lot of the GMO crops were sterile so you had to buy new seed every year. Rick didn't think GMO's were all bad, all the time. Steve R agreed but he didn't think there was a problem with non-GMO crops contaminating the GMO. The problem was the other

way around. LaDana's thought was the possible cross-contamination. How would they deal with that? Steve R thought there were ways to mitigate, which was why he chose the term 'mitigate' rather than 'prevent'. Someone at least had to put an honest effort into having setbacks or buffer or something to minimize the possible cross-contamination. John asked if 'minimize' was in there. Steve R pointed to 'mitigate'. LaDana asked how you'd know if your neighbor had GMO crops. Steve S said you'd ask your neighbor. Being a good neighbor was not a spectator sport. He reiterated including the term 'agri-counter-culture' in 2.f somewhere. Frank asked if it would be defined. LaDana said it wasn't defined but nothing really was in this. She didn't think they wanted to get into definitions here. Wally said they really couldn't because it was a moving target. The things [in section 2.f] were relatively new in terms of certifications and programs in the last 20 years. The idea that people were trying to do it for value-added, more money for productions, etcetera was great. Steve S mentioned that everything was grown organically once. Organic was old and new. Bob said it had become an alternative to what the majority of farmers did and that was why the word was important. Wally agreed; it was big money.

The Board continued with pg. 7. Steve R changed the last sentence of 2.g.iii to guide them into the future. The revised sentence read, "As Lake County's zoning and subdivision regulations are developed, revised and amended, consideration will be given to help to accommodate a reasonable amount of agricultural housing by allowing for additional permanent residences, for temporary housing, etc., for such workers." He didn't want someone to say they would build a one hundred- unit apartment to house agricultural workers. They could only build a reasonable amount based on the size of their farm and what they really needed. Was it important to have limits? Wally thought there were two parts. He'd never seen another right to farm ordinance with the courage to say you needed to encourage housing, etcetera for agricultural people. It was a nice statement of policy saying this was needed and encouraged, and by the way, don't abuse it. He thought it was a two-edged great deal. They needed the help for specialty crops like Dixon melons and cherries. It was also good to say not to abuse it in a nice way. They could make it reasonable and related to agricultural production. That was fabulous and a quantum leap ahead.

LaDana said her line of thinking was that currently Lake County had zoning regulations that addressed this issue, like on the East Shore. You could have housing. Typically it was temporary but she didn't know if the zoning said it had to be temporary. They were already doing this in Lake County so she wanted it to be recognized. Steve and LaDana recalled a case where someone was trying to get as many rental things as they could out of the situation. LaDana said the zoning specifically allowed these for agricultural workers because they recognized the need for that type of housing in those areas. They also recognized the need that it was on a temporary basis. The reality was the orchard workers might be there for a few weeks or maybe a few months and then they were gone.

Jerry asked if he made the investment to provide housing for workers to come in, if he could rent those out as recreation homes. LaDana said no. When the zoning permits were issued, they specifically said what purpose these were for. If they were doing something that didn't comply with that, they were going against their zoning permit. Sometimes the septic system was designed for that. This played into one of the things they had wanted to happen in the DMR

(Density Map and Regulations), which was to allow for the agricultural housing units. That was another reason for bringing this forward. That had been important to people when they adopted those regulations. That was what came out of the meetings. They'd been abused, in her opinion. Jerry asked how reasonable it was to expect someone to make that kind of investment for such a short term use. Wally said this was the response they had elsewhere: ancillary agricultural activities, including guest houses, rentals for ranch rentals, guest ranches, dude ranches and whatever else was encouraged. This way they tried to address the question of why to put the money in when you only used it for two weeks a year. The [inaudible] for ancillary business for agriculture from those seasonal houses. The summer help lived there and then you rented it in the fall, and in the winter you rented it to snowmobilers. In the spring, the horn pickers might rent them. For most people who ranched, a few days' rental was huge money. The question was at what point in time was the ancillary business something agriculture needed to survive. On the lake, he could see a lot of cases where someone renting that ancillary small facility to a family that didn't have a lot of money for the weekend. They might do it and that helped agriculture support itself too. If they looked at the language on the last page of one of the first drafts he'd given them, they included things like cell towers and wind towers as ancillary [inaudible] that made money for agricultural property. Perhaps a policy statement about if you wanted to encourage ancillary agricultural income, utilization of seasonal housing for other purposes was something they encouraged for those reasons. Steve R and LaDana agreed it shouldn't be abused.

LaDana thought the time to address that was when writing zoning regulations or subdivision regulations. This was the policy. They wanted to make sure it was recognized so they could write it into the regulations. The other regulations, like the septic regulations, played into it too. They were limited. Buildings for rent or lease regulations would also play into it, which they were required to adopt. Steve R asked where you drew the line. Could the East Shore Zoning District say they didn't want wind turbines along the lake so they were going to make a regulation to prevent those from being built in that zoning district? Someone in the zoning district who had 10 cherry trees might point to that and say it meant he could have a wind tower if he wanted. How did you get around that?

Wally said the question was which policy would guide. It would become a political decision between the Commissioners supporting right to farm versus do they support zoning. People could petition for a specific zoning but the Commissioners weren't bound to produce what they asked for. If the East Side district said they wanted no wind towers at all, the Commissioners were not bound to have to do that. LaDana said that was citizen initiated zoning and most of Lake County, including East Shore, was county-initiated. This was a case where they might want to come up with a conditional use to address these kinds of uses and review them on a case-by-case basis and determine what would be reasonable for the district. Wally referred to the case for the right to farm ordinance [and what you wrote for places which were zoned.] Some agricultural ancillary uses should be considered conditional so there were additional mitigation efforts made to lessen possible impacts or abuses of those things. Then the policy recognized that they thought it was good also supported the concept that perhaps they had to mitigate. The implementation tool kit would come later, which was what you ended up doing with your subdivision regulations, sanitation rules and zoning changes that might be made. That was how you implemented.

Steve R asked if the Missoula Commissioners had a 'right to heavy industry' policy, could they still have said no to heavy industry in a particular zoning. Wally answered they could have still said no for a variety of other reasons because the bigger growth policy still drove the bus. Steve R explained he was asking if they put in a policy that encouraged agricultural housing and then some zoning districts wanted to limit the amount of agricultural housing, could they do it. The answer was that they could. LaDana thought part was how the zoning district was adopted. If it was county-initiated, the county might not want a district like that if they had a policy like this in place. If it was citizen-initiated, then they would come up with their own rules. Wally described the two kinds of zoning as top-down and bottom-up. That was alright. Who made the approval of both of them in the end was the Planning Board giving advice and the Commissioners, who adopted, didn't adopt or changed. It still wasn't that the policy drove the absolute bus. The growth policy wasn't an absolute document but it was a policy statement listing what was encouraged. If that meant perhaps they encouraged conditional uses for these things to prevent abuse or other problems, that's what the policy should say.

John thought they needed some wording for 2.g.iii. Steve R suggested adding 'a reasonable amount of agricultural housing'. There was also the idea that it should be approved under a conditional use. LaDana thought they ran into problems there, too. [Conditional uses] were more of a zoning thing. She didn't think they wanted to dictate to the zoning districts. Also, sometimes they needed the housing immediately and there wasn't time to go to the Board of Adjustment. Steve R thought there was an opening for abuse. He wanted to see if they could close that. John suggested dropping the last three lines. LaDana suggested she could look at it closer and see what they could come up with, without stepping on the zoning districts.

Steve R brought up the list on pg. 7 and pg. 8. Some zoning districts had regulations that prevented some of these things and/or limited the amount. He checked that they didn't restrict the zoning districts from doing this by having the right to farm policy. Wally said it didn't restrict them if they already had them. If those weren't adopted yet, this might be the tool that would keep that part from getting passed in the zoning district. Steve R gave the example of a new zoning district wanting to prevent big biofuel production operations. Wally said they could do that if they said it was too much impact in their district and they wanted it zoned out. The question would be if the Commissioners passed it or not as a district. LaDana said they could also ask for a variance. If they were mitigating and the Board of Adjustment (BOA) could come up with a reason and make findings, they could potentially have their operation. Steve R said at some level, some of this didn't belong in a residential area. Wally observed a lot was written for bigger stuff as the urban agricultural interface changed rather than micro or smaller agriculture. They could add or subtract if the list was a little different than what it should be. To him, it was the things they'd lost like the cherry processing plants. Steve R thought that was the market.

LaDana said some of those were coming back. People were shipping crops further and further, at greater cost. They were trying to do things more local. She suggested keeping in mind that a lot of these weren't the little lots along the lake. It was a big county and there were parcels that could accommodate these things. The list was general. Some of these things couldn't be done on a small parcel. This was a general policy. Steve R expressed a concern about opening doors for abuse. Wally highlighted that things like big biofuel production plants were a new

agricultural problem and right to farm didn't encourage that to that degree. LaDana said if you were in an area where a group really didn't want certain kinds of things, they needed to create a zoning district. That was what the DMR had encouraged but it didn't happen. People called regularly with concerns about a commercial operation going in next door and the DMR didn't stop that. They would have to zone and come up with those regulations.

Steve R asked if they had a policy that encouraged biofuel production, did it prevent those neighbors from forming a zoning district that said no biofuel production. LaDana said when they wanted to form a zoning district, it had to go out to the people there for comment.

Steve R asked about the Lake County Planning & Zoning Commission mentioned in #3 on pg. 8. LaDana explained that part 1, citizen initiated zoning districts went to the Planning & Zoning Commission, which had met once since she'd been at the County. It included Melita Island/LaBella Lane Zoning District, Kings Point Zoning District, and South of Ronan Zoning District.

Jerry asked about 3.d at the very top of pg. 3 and whether this should be encouraged or required. LaDana said you couldn't require the title companies to do that. Wally said they could require it to be on the face of the plats. It would be disclosed through the back door so it would be included in the title policies. Jerry checked that the out-of-staters would be advised about a greater setback from a barn before building, for instance. Steve R said this assumed he looked at the plat. Wally said it was also on the face of the title policy that said subject to conditions of plat approval and so forth. LaDana said the thought was if this policy was adopted, they'd give copies to the title companies and real estate agents to hand out. It would also be available on the County's website and through the Planning office.

Bob asked about the wording of 4.b of 'when funding of such is available' on pg. 8. Was that the funding for printing? LaDana confirmed. Bob didn't think that would be much. LaDana said that depended on what needed to be printed and on the budget. She gave the example of the landscape brochure developed a few years ago. They had to get a grant to fund that. It seemed ridiculous but they didn't have money like that built into the budget.

Bob suggested if there was a Board of Realtors in this county, they could be asked to add this to the Lake County disclosure statement. For instance, if someone was allowed to shortcut across a property to get to an irrigation ditch, the seller needed to tell the buyer about that. Wally thought that was part of the encouraging giving this to title companies, realtors, etcetera on the website. Bob suggested making an effort to have this become part of their documents. Discussion turned briefly to realtors. Steve R suggested adding 3.e on pg. 9 to encourage the real estate community to include the right to farm policy as another education tool. LaDana thought that was what 3.d sought to do. After 'voluntarily disclose', they could add something like 'and include in their disclosure statements'. Bob thought that educating the new buyers so they learned the term and maybe what it meant was the best way.

Steve R listed some housekeeping items on pg. 9. The main point in the title for #5 needed to be bolded to be consistent with the others and #6 needed a title, such as 'County Government Commitment.'

Jerry returned to pg. 1. Tonight, one of the purposes of this policy was the philosophy that agriculture wasn't a nuisance. He suggested including that in the first 'Whereas', using those words.

Bob asked about pig farms. What could you do about that? Could you do something? Wally replied that water quality was a big issue. New big pig farms were not something you could do under right to farm, if it was big and made a big stink. It was the old big pig farms that this would help. Right to farm was about existing agriculture, its [inaudible] things and historic agriculture. Jerry asked about the guy who supplemented his agricultural income by junking old mobile homes and 'accidentally' catching them on fire. A lively response ensued from the Board. LaDana thought most of the stuff of the person in question had gone into conservation easements and perhaps 20 acres remained, if that. Wally said this [policy] didn't trump nuisance and all those things in the ordinance in the sanitation dept. You couldn't dump [inaudible] waste. It also said most people couldn't complain about cows, tractors at night and such. Steve R said if you moved in next to an existing pig farm, you couldn't complain about it later. It did allow you to complain if a new neighbor moved in and wanted to start a pig farm. He asked if Wally could point to where it specifically did that. LaDana added a question that they wanted to encourage new operations to come in. How would they get there if they said you could never have a pig farm? Wally said it was not a 'never'. It was where the language about reasonableness and magnitude language that they had earlier came in. You encouraged the ancillary stuff especially. Twenty pigs were a different thing than 2000. Steve R said if someone wanted to have a pig farm, maybe they could look for another 40-acre spot rather than the one right next to a 100-lot subdivision. Wally said that was the message.

LaDana asked how they would know that and regulate it. The person who wanted to do a pig farm wasn't necessarily coming to the Planning Dept. or Lake County except for maybe a septic permit. By the time Planning heard about it, the neighbors were already complaining. Wally said it wasn't septic. It was water disposal and waste disposal by the State and the County. Steve R expanded on the example with the 40 acres next to the 100-lot subdivision, where someone bought the 40 acres and put in a pig farm with 100 pigs. The long-time neighbors in the subdivision then complained. Who had to give in? Wally confirmed with Steve R that this was a new 100 pigs. Probably who would give in terms of it being a nuisance would be the pig owner, if his pigs stunk that much. It would be too much problem for the existing stuff. Twenty pigs would be different. The harder one would be 20 goats for weed control. Some people hated goats and said you couldn't have them. It was agriculture because the goats might also be used for meat, and the weed control was ancillary to agriculture. Those were more complicated. It was a tradeoff. Historically, lots of people had goats. How did you weigh those things? Those things fell under other regulations of other bodies.

LaDana brought up wildlife and agriculture interaction. She didn't recall something in the policy that covered that. Should they include something? Wally said if it wasn't there, they should include it. They encouraged minimizing that conflict. Apples on the ground or dead livestock with bears around should be covered. LaDana said she could come up with a section just for that somewhere under #2.

Wally turned to the fourth paragraph on pg. 1 and read it. It wasn't a commonly accepted agricultural operation to have 100 pigs. He also pointed to the language about people who ran responsibly, non-negligently, etcetera. The language was not intended to be a blank check for bad guys. The purpose was not to protect abusers. The purpose was to protect the rest of the people who were trying to make an honest living doing this.

Frank asked about established large orchards that used really strong pesticides over a wide area. The winds carried that. If you wanted to put in a little organic orchard next door, what would protect you since they were established? Wally said it protected you because it encouraged not to overspray and to acknowledge the other agriculture. It made it easier to whack the neighbor who did it. Bob said it discouraged irresponsible behavior. Wally said this was really the only and first time that agriculture saw County government step up and say they supported agriculture. Most agriculture would say that County government and cities didn't like them very much. Right to farm said they were here, important, not a nuisance and that [the government] supported them responsibly. That was a huge policy statement for a County with a million acres of ground and a thousand producers who did it.

Steve R thought letting people moving to Lake County know that 60% of the land was under agriculture would make them wake up a little bit. LaDana asked where the percentage he used came from. Steve R explained he googled it. LaDana thought it would be a good thing to write into the policy. They agreed it would be good to regoogle to confirm the numbers. Steve R said a whole bunch of agricultural statistics were available that talked about the number of farms in different counties and the average number of acres per farm. He wasn't sure whether or not the total acreage in Lake County included the part under water. If the wilderness area was left out, the percentage would be higher. LaDana thought they could check in the current Growth Policy.

Steve R asked if they were done with right to farm. LaDana noted it was a public hearing but there were no public here.

DISCUSSION ON TOOLS WHEN CREATING REGULATIONS /POLICIES FOR CONSERVATION LANDS OR SUCH ADJACENT (approx. 9:20 pm)

LaDana handed out a conservation easement and two comment letters. (See attachments to minutes in the Feb. 2016 meeting file for handouts.) The Board could see the kind of things they should be looking at when these types of items were reviewed. This was another component of the Growth Policy they were working on.

Wally explained this was a long education and outlined some history. The first municipal or county conservation easement bond or open space bond in America was done in Missoula, MT in 1977. In order to make the money go further, they supported the concept of the State adopting a conservation easement law driven by the federal government. Children knew about conservation easements in the form of Sherwood Forest (with Robin Hood and his Merry Men) from 1088 AD. The Chillingham Forest to the north of that one was formed in 1015. The concept of a split title in land was very English and historic. Montana's law allowed you to do it. He gave an example where on a property at Lake Mary Ronan, Rick might own the timber rights. Sigurd might own the grass and grazing. John might own the right to the sunshine (solar panels). Jerry might own the right to mine the coal. Steve R might own the right to the ferrous metals such as

iron ore. Eileen Neill might own the fish on a hundred feet of the lake that the property fronted on. A conservation easement acknowledged the split title and gave someone the ability to hold the right to build homes or subdivide or develop. Bob might own the right to build the houses and he would never use them. People would say the land was protected but it wasn't. What you did was you gave someone the ability to hold the right to build homes or subdivide or develop. Steve S might own the right to the wind.

The reason they called these conservation easements was the people who wanted to fund it were wealthy people wanting a tax deduction, so the conservation easement statute was to meet what the federal tax code required. Originally there were specific options on how that deduction for a conservation foundation could be taken. It was an IRS tool to accomplish preserving land as open space. The problem was it turned into a mechanism for open space but they should have saved the rest and they didn't. He gave an example from Missoula where they bought as much of the mountain with the 'M' as possible The building line on the hill to the right of it (Stone Mountain) went up three city blocks in about 10 minutes. People on the hill could sell property for a much more valuable house because they would never look out their window at reflected glass, cars or the like. So they destroyed the very thing they set out to save. They saved a mountain but the purpose was not that but to try to keep all of that as open as they could. The very thing they had done made a huge incentive to screw up the rest of it. They made another mistake. By leaving it open for public recreation, dog walking and hiking, not a single elk, deer or such was inclined to stay around. Its value as wildlife habitat was zero. The City addressed the question with the next mountain to the north so from Nov. 1 to April 30, you couldn't walk on Mount Jumbo.

Wally gave another example in Centennial Valley where the Nature Conservancy got a really nice donation of a conservation easement. The two surrounding ranchers subdivided into ten 160-acre parcels the next week. The very thing they didn't want to happen, happened, because the adjoining 5,000 acres would never have a house, a light or reflector glass. In the 1990's, they realized they needed to do more creative stuff. The federal tax law changed to limit the options on writing this off so there was a rush to do these before the change.

When someone showed up to subdivide what was around a conservation easement, Wally wanted them to comment to local government about what that would do. He gave an example from the 5,000 acres in Centennial Valley. The subdivision regulations could do a lot with those 160- acre parcels if the owner of this conserved piece of land told them the houses next to the fence with their dogs coming on their property screwed up the value for elk, fisheries habitat and so forth. The stormwater running onto this piece of ground screwed up the spawning ground for the grayling fish, and the lights, noise and so forth kept the wolves, cats and so forth off of the property. If you had subdivision regulations and a growth policy built to deal with that stuff, you could suddenly [inaudible] things into division review. You had a building envelope, which said your house had to be built within 300 feet of the county road on your back line. You had to have wildlife-friendly fences, which were 14 inches tall and 42 inches on the top. The key was they had no horsepower to put the rules onto those properties unless the owner of the easement stepped up and said this affected the conservation value greatly. He listed some of the effects that were regulatable in conservation easement language in subdivision regulations etcetera and in zoning if the owner of the property stepped up.

Wally pointed to the second paragraph on the second page of the Wheatland County letter regarding comment from the landowner. (See attachments to minutes in the Feb. 2016 meeting file for handouts.) It meant that if the owner told them it was going to screw up the conservation values and the agricultural values or silvicultural values, they could mitigate with subdivision reviews of the surrounding [lands].

Steve R asked why the owner of the conservation easement had to tell the County. Shouldn't the County know? Wally answered that the County didn't know. The owner was the person who had an annual report and information on the mitigation stuff on the property and how their progress was on the easement. The County didn't have a reason to regulate if the owner didn't show up. The easement was a voluntary conservation contract with the owner who split the title off. He wasn't saying the person who held the conservation easement was the one who had to do this, but the property owner who owned the remainder had to testify and say that. If the owner told him, he could make sure the neighbor didn't screw it up. If the owner didn't tell him, he couldn't do it.

Bob asked if conservation easements were usually created and given to a conservation organization to manage. Wally replied the management of the property owner with the easement interest was held by this entity which policed it. Bob gave the example if he put 150 of 160 acres into a conservation easement. Wally explained it was still his land but the 150-acre conservation easement was given to Frank's conservation organization. That was how you got the tax deduction. Frank policed the conservation values but it was up to Bob, the land owner to tell the County that there was a problem. Bob asked if he could tell the County there was a problem if anyone ever wanted to put lots there or only with a specific application for lots. Wally said it was with a specific application.

LaDana said typically a subdivision application came through for review and the neighbors received notice. Even for the little ones, a courtesy notice was mailed. It was the owner's obligation to send comment saying there was an easement that needed attention and to implement things to help the owner protect the easement. It was the same thing with the BOA where they put notices out to the immediately adjacent neighbors so they'd know what the project was.

Steve R said when the Boards reviewed something, they looked at the property next door and asked questions about what was going on there. LaDana said they might do that, but the staff didn't necessarily know what was going on next door either. The packet of information staff received dealt with the subject property and how it impacted local services. It usually didn't address the neighboring properties. Staff might notice something. Unless there was a sign that said 'conservation easement', [staff] probably weren't recognizing that.

Wally gave another example. If the owner sold the easement to the Five Valleys Lands Trust, the Nature Conservancy, the FRPP program (the federal program that bought it for farm and ranch protection) or the federal wildlands program, the owner got paid for the interest in the property. The owner didn't give it away—they got money and a tax deduction. It wasn't unreasonable to say if the owners really believed in the conservation value they were giving to

Frank's entity to hold (this had to be a qualified 501 C3 for conservation purposes), the owners managed it and knew what was on the ground there. Bob said the flaw was the motives of the owner were not always conservation. The motives often had to do with tax deductions. Wally said the owner might not do it. If the owner really believed in conservation, the owner would have done this stuff and given the County the mechanism to help it work.

John asked how the landowner that sold a conservation easement was supposed to know he should tell the County. Wally said the entities that took the easements gave the County notice and an opportunity to comment. LaDana noted that came straight from state law. This happened in John's case. One of the comments provided typically was to say that if something was going to happen around [the property], please make sure to comment on it so the County could help protect the easement. Wally said the problem was the holders of the easement didn't put the language in John's. They didn't want to do it because they were lazy. John thought it might be in there. Wally wished they had put it in there. John's project for grizzly bear habitat was great. The person who knew what was there was John. Who knew what the neighbor would do? John said if he knew, he could respond differently. John said they thought they were in a 20-acre density unit. They didn't think they needed to worry about other things because of that zoning but that might go away.

Steve R said in order to maintain the quality of this conservation easement, a buffer was needed and they would force the neighbors to have the buffer instead of the owner. Wally said they acknowledged the conservation value of this parcel. To acknowledge those values, they were going to make the buffer apparent in the ground around it so their externalities didn't get shoved on that ground. For example, their dogs shouldn't run the bears on John's conservation easement. The County could do that. They might not want the lights from the neighbor's yard on the bears. The subdivision conditions of approval could do that. LaDana amended they could do that if it would impact the conservation easement and the values of that easement. John checked if this was only with subdivision. Wally said that things the County regulated could do this. A zoning ordinance could do this too. LaDana said the zoning had to be something that would address that. Density zoning addressed only density so it wouldn't necessarily protect an easement like a zoning such as the East Shore might. East Shore limited it to certain uses, setbacks and so forth.

Bob thought the decision to put a conservation easement on a piece of property that was valuable wildlife habitat became better protected with a conservation easement. Other entities gave him a tax write-off that would help him protect the conservation values of the property. If he owned the property and just had it posted and fenced, no one else around him would help him protect it from the lights of adjoining subdivisions, for instance. The government would because they paid benefits to him for this. Wally said the problem was the government couldn't. The local government could in that they regulated subdivision and zoning. The problem was the only way the local government could do it was if the owner commented to local government. Bob said part of the proof of that was the larger government entities awarded him a conservation easement and paid for it. He thought that would be better evidence than his testimony at the podium about a subdivision hurting the wildlife values. Wally said no. Bob said the local government would help that piece of property maintain its conservation values. Didn't it make a difference if there was a conservation easement on it? Wally said it mattered a lot. The problem was its worth was

not up to the entity that held the easement. It was up to the guy who was on the ground and managed it. Bob said that was true before he got a conservation easement. Wally said the big difference was suddenly they'd acknowledged the wildlife value was worth more.

The letter on the Tabor easement said that the most important thing on Tabor Ranch's easement was the importance to the State of Montana of preserving a viewshed and access to a working agricultural operation. They did nothing in the easement to ensure agricultural opportunity. Wally pointed to the portion in the handout of the comment on the draft easement in the second paragraph, which addressed the agricultural opportunity. It was only agricultural land if someone was doing agriculture. The key to preserving agriculture meant that someone had the opportunity to do it. You had to provide the opportunity. You didn't say you'd preserve the agriculture. You said you'd preserve the opportunity. That was the same reason you had wildlife-friendly fences, for opportunity. It wasn't a novel concept to say the conservation thing [preserved] opportunity. They just forgot to do it with agriculture. With wildlife, it doesn't promise that the wildlife will be there but that the opportunity was provided. That was a huge change in thinking for conservation organizations. It seemed like the conservation easements for wildlife and for agriculture almost always went hand in hand. [The county] also said they needed to have some fire management plan, particularly protection that they couldn't burn it down. [The government] suggested selective timber harvest. The response with some easements was that there would be no timber harvest. He pointed to the Johnson easement in Ravalli.

LaDana said she didn't know if the recorded easement document was identical to the one reviewed by the County. The County referenced sections in the review. Wally pointed to the information in IV on pg. 4 of 16 of the recorded easement. There was no agricultural opportunity, no fire management opportunity, and no bio-control opportunity with goats for weeds or for cows for weeds. Steve R checked that this was okay because it was what the owners wanted. Wally didn't think it was what the Johnsons wanted but they got paid a lot of money to do it.

John asked why this board needed to know this. Wally said as they did a growth policy summary of different things in the county, they needed to know the issue was did they want to preserve agricultural opportunity, silvicultural opportunity and wildlife habitat. Deer and elk weren't on sides of timber. They were in hayfields. Steve R thought from a property rights standpoint that they should allow someone who wanted to do a conservation easement that excluded agriculture, timber harvest and so forth to do that. Wally said they had.

LaDana added they were required to allow the County the opportunity to comment. If the County was going to help them with their easement, the County was providing suggestions on how to do that. What came up that hadn't been mentioned yet was agriculture helped wildlife. She referred to Wally's comment that the two went hand in hand. If you got rid of one of those, it forced the wildlife to go elsewhere. Wally referred to Fleecer Mountain and the tape on the Internet from Fish and Game called 'Landscapes', where they got rid of the cows and the elk left too. They put the cows back and the elk returned. Bob pointed out elk were popular but not the only species in Montana. There were places with no farming or ranching that had plenty of other species including elk such as the national parks and the Bob Marshall. There was no doubt an elk would rather eat from a haystack. His point was it wasn't an open-and-shut case that

agriculture did everything they needed for wildlife. Wally agreed. Bob continued that they also needed cover. He hadn't seen anyone in the state with a hedgerow. Fences were wire and fence posts. In the East, there were rock walls with lots of creatures. There were plenty of deer. Elk had been planted. It wasn't just black and white that agriculture was great for the wildlife.

Wally said if you wanted to have timber practice, timber harvest for fire protection, etcetera, you needed it. Part of it was fire management, weed management, agriculture and all sorts of things were tied together. He pointed to the other paragraph saying the landowner would cooperate with state and federal agencies in the management of big game and that would be helpful. He described conservation easements that would have made things easier for Fish and Game if they'd been required to have people hunt the elk because there were so many there. When you looked at conservation easements that were screwed up, you could have solved a bunch of problems if only you'd just put this language in the easement in the beginning. He talked about fisheries, spawning and protecting native fish. If the easement said they would work with the regulatory agencies to solve the problem for threatened, introduced or other species, you could solve it. If the easement didn't say it and the owner was uncooperative, you were done. For a management tool, not every county would step up and say they were willing to do this because they supported what [the owners] were doing about conservation values, wildlife, agricultural opportunities, etcetera and the best way to give [the County] the horsepower to do it was the owners needed to comment. Then [the County] could suddenly structure what was approved around the owners as a lot more user friendly. Subdivision regulations and zoning regulations also helped with these things. The purpose of the discussion was to give the Board an idea of what was out there and where it worked. The County had the right to comment on all easements. If the owners were willing to appropriate the conditions, at that point in time you made life much better. If the conditions were there, you had some major horsepower to deal with these things.

Steve R mentioned he hadn't seen a conservation easement come to the Board. LaDana clarified that the Planning Board didn't see the conservation easements. The Board needed to be aware of them because they played into the growth policy, the subdivision regulations and the zoning regulations and maybe right to farm. They were looking at this because to be able to play into those things and to be able to comment on the easement, [the County] needed something on which to build the comment. Wally added that traditionally the Commissioners commented. If the Board wanted to participate in the process of commenting, that was a message the Planning Board should give to the County Commissioners. He thought they should. They had a good ability and courage about what they said and how they said it, and they were articulate with the reasons why. LaDana explained there were time limits on easements, with only so many days to comment. With the example handed out that was done with the Tribe, you could see the County wasn't even given the full amount of time. The timeline came under state law. The comments went to the entity that was getting the easement and were a suggestion. You could see that the suggestions weren't always incorporated. The County's thought process was for things that would help improve an easement and [work for] the long term.

Wally said it was an in-perpetuity easement. He wasn't prone to help a county write a set of comments on regulating the subdivision around the conservation easement if the conservation group that held it wasn't creative enough or courageous enough to say to the owner to comment to the county [inaudible] to help this be better. Bob checked with Wally that he wanted the

easement holder to comment to local government on the effects of surrounding development on that easement after they've held the easement for a few years when someone wanted to put in a subdivision. Wally said they needed to say what that did to their value. They also had to put it in the easement to make it a condition of approval. He clarified that they needed to have the owner of the property comment to local government on how a surrounding development affected the owner's conservation property. Bob understood that if he owned the land or the conservation easement, he didn't need permission from the easement holder to notify [the County] that some dangerous stuff was going to happen. Wally said it required the owner to comment to local government to mitigate that. He mentioned the Land Reliance refused to do it five times. Bob checked that this was covered in what number four said [in the Wheatland letter]. What was the argument for not including it? Wally said they didn't want to have an affirmative obligation on the property owner and they also said they didn't have the time to deal with it. [The County's] motive was to say if someone was going to do a conservation easement, they respected the person for doing it and could make it a lot better if they could control what was around it. That was the purpose. They spoke more about land trusts.

LaDana clarified that the County had 90 days to comment. If the entity didn't hear from them in 90 days then they could assume the County had no comments. Wally noted the Wheatland County letter read the way it did because [the submitters] hadn't written the language so [the County] wrote it for them.

Steve R asked if the bottom line for the Planning Board was that when a request for comment on an easement came in, they would put it on the agenda. LaDana didn't know whether or not that was the case. Wally said if they'd like that as a Planning Board, they should make that plain. LaDana thought the regulations specified the local Planning authority. Usually they went through the Planning office, which provided the comments to the Commissioners, who ultimately signed them and sent them out. The reason the Planning Board needed to be aware of it was so they could write regulations to incorporate these things. It didn't necessarily mean they had to review them. The other thing to remember was [the people doing a conservation easement] didn't have to incorporate the County's comments. A lot of the comments had to do with wildlife-related or agricultural-related topics or topics the Board didn't know much about. It might be quicker for the Planning staff or the Commissioners to work through it than to spend two hours going through a document for the Board to come up with comments. If they had something in the regulations, this would help them be able to do that and bring [the Board's] comments forward.

John asked if the County kept track of the different easements. LaDana replied they were recorded. John asked when a subdivision happened nearby if they could take [a conservation easement] to a board. LaDana didn't necessarily know where they all were. It may have been that conservation easements happened that they never commented on. John could see the value to it. LaDana said it would be good if they knew them but right now they didn't have a mechanism for tracking them. Maybe that would be something they would come up with as part of the growth policy.

Wally summarized that it could be a simple line in the growth policy that said where conservation easements exist, it was important for the County to consider those [inaudible] and

the things in the easements when they consider subdivisions and other development in the surrounding area. That was a statement of policy that gave direction for later for what you were going to do, how to mitigate those problems, how to solve the problems and stop the damage later.

OTHER BUSINESS (approx. 10:15 pm)
None offered.

Motion made by Rick Cothern, and seconded by Sigurd Jensen, to adjourn. Motion carried, all in favor. Meeting adjourned at 10:15 pm.